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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Part 21 of the Commission's Rules for
the Domestic Public Fixed Radio Services

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CC Docket No. 93-2

To: The Commission

COMMENTS OF BELL SOUTH

BELL SOUTH CORPORATION
BELL SOUTH TELECOMMUNICATIONS, INC.
BELL SOUTH ENTERPRISES, INC.
BELL SOUTH CELLULAR CORP.

William B. Barfield
James O. Llewellyn
1155 Peachtree Street, N.E.
Atlanta, Georgia 30367-6000

Charles P. Featherstun
1133 21st Street, N.W.
Washington, D.C. 20036
(202) 463-4132

Their attorneys

March 16, 1993

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BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Enterprises, Inc., and BellSouth Cellular Corp. (collectively "BellSouth"), by their attorneys, hereby submit the Comments of BellSouth in response to the Commission's *Notice of Proposed Rulemaking*, FCC 93-5 (February 9, 1993) (*NPRM*).

BellSouth fully supports the Commission's efforts in this docket to streamline the authorization of new facilities in the Point-to-Point Microwave Service ("PPMS") and to eliminate unnecessary delays in the provision of needed services by PPMS licensees. BellSouth currently uses PPMS facilities extensively in the provision of services, such as cellular, that are rapidly growing in response to consumer demands. BellSouth is concerned, however, that the Commission's proposals may have the unintended effect, in some cases, of delaying the commencement of needed services without a compelling reason. Moreover, the revision and consolidation of forms proposed by the Commission may have the incidental effect of increasing, rather than decreasing, the amount of paperwork that must be filed with the Commission. Accordingly, these Comments suggest several ways in which the Commission's proposals can be further streamlined.

I. THE COMMISSION SHOULD STREAMLINE THE AUTHORIZATION OF BOTH CONSTRUCTION AND OPERATION OF NEW FACILITIES

In order to streamline the deployment of new facilities, the Commission has proposed to allow construction of new facilities prior to grant of an authorization if certain conditions have been met. At the same time, the Commission has proposed to eliminate the routine use of temporary-fixed authorizations ("TFAs") or special temporary authorizations ("STAs") for interim authorization of facilities pending the processing and grant of applications for regular authorizations.^{1/}

Although BellSouth supports the Commission's goal of eliminating the obstacles to expeditious deployment of facilities, the proposal in the *NPRM* only goes half way to the goal. The reason why TFAs and STAs have been frequently employed is that today's telecommunications network operators need the ability to deploy *operational* microwave support systems without waiting many months for approval. The Commission's proposal would significantly *impede* the ability of PPMS licensees to provide needed service promptly. Even though the Commission would allow construction of facilities before approval is granted, the facilities could not be used in providing needed service to the public until many months have passed -- the application must be filed, appear on public notice, pass the statutory 30-day public notice period without objection, be processed by the staff, and be granted before operation can begin.

PPMS facilities are the backbone of many cellular systems. Delays in deploying *and using* microwave facilities will frustrate cellular licensees' ability to expand their service offerings and meet customer demand, even though additional cell sites can be constructed and placed in operation by a cellular licensee without specific prior authorization. A cell site cannot function as part of a cellular network until its control and interconnection facilities are deployed, which requires operational PPMS facilities. There is often no alternative to the use of PPMS for cellular infrastructure, because cell sites may be located at remote locations without adequate landline facilities. Thus, the PPMS is a critical

^{1/} *NPRM* at ¶¶ 5-14.

element of the infrastructure for new and expanding telecommunications services, such as cellular and other services. Given the rapid growth in services requiring PPMS support, as well as the increasing demands on the Commission's staff and budget, BellSouth urges the Commission to adopt the proposed alternative, as set forth below, which will expedite the expansion and modernization of this telecommunications infrastructure, substantially reduce delay, and increase responsiveness of PPMS licensees to the public need for service.

A. BellSouth's Proposal: Grant Blanket Authorizations for the Construction and Operation of Facilities Subject to Satisfying Conditions and Filing Notifications When New or Modified Facilities are Deployed

BellSouth proposes that the Commission adopt a system similar to those used in the Domestic Public Cellular Radio Telecommunications Service and the Interactive Video and Data Service, under which an initial application is filed and subjected to full qualifications review, which would, upon grant, allow the licensee to construct *and* initiate operation of new facilities meeting specified conditions, including frequency coordination.^{2/} Under this system, the Commission would accept applications for "blanket" PPMS licenses for specific frequency bands in specified geographic areas. These applications would be placed on public notice, subject to petitions to deny, as required by 47 U.S.C. § 309. If the applicant is qualified, an authorization would be granted that would permit the licensee, without submitting further applications or awaiting further grants, to construct and operate facilities within the frequency band and geographic area specified, but only if specified conditions are met, specifically:

- (1) successfully completing frequency coordination for the exact facilities to be deployed with other licensees, evidenced in writing;
- (2) ensuring that the site has any necessary FAA clearances;

^{2/} The Commission observed, in paragraph 4 of the *NPRM*, that:

Our experience has been that few frequency coordination conflicts arise among PPMS applicants and those that do arise are virtually all resolved through the mutual cooperation of the parties before the application is filed and with minimal intervention by the Commission.

The decades of experience of BellSouth Telecommunications, Inc. and its predecessors corroborate the Commission's observation.

- (3) determining that the proposed facility will not have a significant environmental effect; and
- (4) establishing that the facilities are not within 35 miles of Canada or Mexico.

Upon satisfying these conditions, the licensee could construct its proposed facilities and place them in operation; a form would have to be filed with the FCC notifying it of the new or modified facilities upon commencement of operation. Notifications would promptly be placed on public notice for informational purposes, and the Commission would retain the right, upon review of the notification form, to reconsider its acceptance of the notification and order cessation of operations. Facilities not meeting the conditions could only be constructed and placed in operation upon grant of a separate authorization.^{3/}

This procedure complies strictly with the requirements of Section 309 of the Act because every application for a station license will be placed on public notice before grant, but it avoids the need to re-authorize such stations each time a facility within the parameters of the license is deployed. This process has been used for years in the cellular service, with thousands of new and modified facilities placed in operation each year without the need for prior regulatory approval.^{4/} Indeed, the Commission has gone much farther than this in the Interactive Video and Data Service, where the licensee is not even required to notify the Commission when individual facilities are deployed under the blanket license.^{5/}

Adoption of this procedure will provide PPMS licensees with the ability to respond swiftly to needs for new service, and avoids the need to determine whether a procedure such as the TFA or STA may lawfully be employed to avoid the delays inherent in processing applications. It would, moreover, reduce paperwork burdens on licensees and minimize the demands on the Commission's staff.

^{3/} BellSouth notes that the *NPRM* proposes to reduce the construction period for PPMS to 6 months. *NPRM* at ¶ 17. The construction period would not be applicable to facilities constructed under BellSouth's proposed blanket licensing approach, but for facilities not covered by the blanket license, requiring separate authorizations, BellSouth suggests that the Commission utilize a 12-month construction period, uniform as to all Part 21 facilities.

^{4/} 47 C.F.R. § 22.9(d)(7) provides that a notification on Form 489 must be filed, but no prior authorization is needed, for "permissive changes," including a "change to or addition of a cell site, provided that the CGSA is unchanged," and a "change to addition of a cell site during the five year fill-in period," under certain conditions.

^{5/} See, e.g., 47 C.F.R. §§ 95.815; *Interactive Video and Data Service*, Gen. Docket 91-2, *Report and Order*, 7 FCC Rcd. 1630, *recon.*, 7 FCC Rcd. 4923 (1992), *pets. for recon. pending on other grounds*.

II. THE COMMISSION SHOULD FURTHER REVISE ITS FORMS TO ELIMINATE UNNECESSARY MATERIALS AND AVOID DUPLICATIVE FILINGS

BellSouth strongly supports the Commission's efforts to eliminate unnecessary forms such as Forms 430 and 494-A, to consolidate duplicative forms such as Forms 702 and 704, and to streamline the revised forms as much as possible. Despite these efforts, there are a number of ways in which the forms could be further improved, as set forth in the Appendix.

In particular, the Commission's proposed revisions to Form 494 should be streamlined a great deal further. While the Form 430 licensee qualification report is to be eliminated, the items on Form 430 live on in the revised Form 494, and indeed Form 494 *adds* many additional "licensee qualifications" items that must be completed.^{6/} Moreover, Form 494 must be filed *each time any of this information changes*, under §§ 21.7 and 21.11 of the proposed rules, while the Form 430 only has to be filed once a year. This will result in a considerable increase in paperwork burden, with no apparent regulatory purpose, contrary to the Paperwork Reduction Act. Moreover, processing the increased number of filings will detract from the staff's ability to process applications that truly require attention.

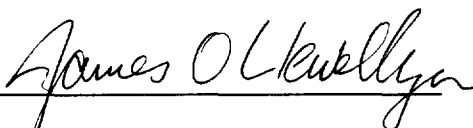
^{6/} See Appendix.

CONCLUSION

For the foregoing reasons, BellSouth urges the Commission to expand its streamlining of the rules for the PPMS to include the proposals set forth above.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.
BELLSOUTH ENTERPRISES, INC.
BELLSOUTH CELLULAR CORP.

By: 

William B. Barfield
James O. Llewellyn
1155 Peachtree Street, N.E.
Atlanta, Georgia 30367-6000

Charles P. Featherstun
1133 21st Street, N.W.
Washington, D.C. 20036
(202) 463-4132

Their Attorneys

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APPENDIX

1. General comments.

The revised forms are unnecessarily lengthy, detailed, and complex. Frequently the same information must be entered more than once on a given form. The fee information should be reduced to a small portion of the first page. Information is called for that does not appear to have substantial significance to the Commission's Part 21 licensing programs. BellSouth urges the Commission to consider, in the case of each line entry on the forms, whether the information is in fact routinely needed, and how the information is used (and how often). Many application forms used in other services have been reduced to one or two pages (*e.g.*, Forms 490 and 574), and the Commission may wish to consider whether the Part 21 forms can be reduced and streamlined in a like manner. This would not only reduce the paperwork burden on applicants, but also reduce the volume of material that must be maintained in the Commission's files.

Moreover, the Commission could facilitate computerized preparation of forms by applicants and entry of information from forms into its database by utilizing "key-letter" responses instead of checked boxes (*e.g.*, Applicant is a (Corporation, Partnership, Individual): __ [insert letter]).

2. Form 494 comments.

Page 1: Fee information in lines (1) through (5) and the total fee should be condensed to six lines, instead of more than one-half page.

Page 2: Items 1 and 2 (name, address, and telephone number) should be consolidated with information on page 1, by adding telephone number to page 1 and eliminating duplication of name and address. Items 3 and 4 could be consolidated with fee information on page 1.

Page 3: Items 12 and 13 (site availability) overlap; if applicant certifies reasonable assurance of site availability (item 13), Item 12 is unnecessary. Moreover, item 12 calls for attachment of site lease or option, which appears to be an unneeded paperwork burden.

Page 4: Item 19 (maintenance center) appears to be unnecessary and unduly burdensome.

The second sentence of Item 22 (public interest), pertaining to multiplexed channel capacity, appears to be misplaced or unnecessary. Moreover, the requirement of a public interest statement is duplicated in item 29(m), on page 6.

Page 5: Item 24 (ownership and control of facilities) appears to be unnecessary; similar information is not required in cellular and paging applications. If not entirely eliminated, this could be replaced with a simple certification that applicant will have unfettered access to the proposed facilities.

Item 25 (state or local franchises) should be eliminated or revised to delete the requirement of an exhibit.

Item 27 (tariff) appears to be unnecessary and should be eliminated.

Item 28 (construction cost) should be eliminated, in light of the certification of reasonable assurance of financial ability above the signature block on page 6.

Item 29 (licensee qualification report) replaces the Form 430. Nevertheless, it requires the filing of extensive information on a recurring basis that appears to be of little importance. BellSouth suggests that it be streamlined as follows:

- Introductory material should be revised to delete references to Form 430;
- (a) should be corrected to specify "Applicant" instead of "Transferee";
- (b) and (c), regarding business activities of applicant and principals, should be deleted because they require substantial information of little or no relevance to the Commission's licensing program to be submitted in an exhibit;
- (f), requiring submission of certified copies of partnership agreements, should be eliminated as an unnecessary paperwork burden;
- (g)(1)(a), requiring submission of certified copies of articles of incorporation, should be eliminated as an unnecessary paperwork burden;
- (g)(4), regarding controlling corporations, should be revised to eliminate the filing of copies of articles of incorporation of such companies as an unnecessary paperwork burden;
- (h)(1), calling for identification of all other radio stations under common ownership or control with the applicant, appears to be largely unnecessary and imposes a very substantial paperwork burden on applicants;
- (h)(2), calling for identification of all radio stations that have, in the past fifteen years, been under common ownership or control with the applicant, requires maintaining records of past ownership and control for an excessive period of time, appears to be entirely unnecessary, and imposes a very substantial paperwork burden on licensees; and
- (j)(2), regarding convictions for crimes, specifies that crimes must be reported if the penalty imposed was a fine of \$500 or more or imprisonment of 6 months or more, whereas the Form 430 only requires reporting felony convictions; the proposed item is far more inclusive and appears to be broader than necessary, given the Commission's character policies, and should be revised to require reporting only of felony convictions;
- (l)(1), regarding familiarity with the rules, is duplicative of the certification appearing over the signature in item 32 on page 6.
- (m), requiring a public interest statement, duplicates the requirement in Item 22 on page 4. Because this pertains to whether the operation and construction of particular facilities should be authorized, and not to the applicant's qualifications, it should remain in Item 22 and be eliminated here.

Moreover, under the proposed rules, a PPMS licensee must submit a new Form 494 to notify the Commission of any change in the information on file within thirty days of the occurrence of such change. At present, much of this information must be filed only once a year, in the annual Form 430. In view of the detailed nature of the information that must be submitted in response to the proposed Form 494, very frequent filings, accompanied by a filing fee, could become necessary, even though no authorization is being requested. For example, any change in the non-communications-related business

activities of a corporate principal or a partner would arguably require submission of a new Form 494, as would any change in a partnership agreement or corporate charter, or the acquisition of new radio licenses by a commonly owned company.

Page 6: Item 30 (listing of common carrier and satellite radio services in which filer holds authorizations) appears to have no relevant purpose and should be eliminated.

3. Form 705 comments.

Page 1: The fee information should be condensed, as in the comments above regarding page 1 of Form 494. Moreover, the Commission should specify whether the name to be listed as the "applicant name" for fee purposes is the licensee or the assignee/transferee, if this must be stated separately from the names and addresses of the licensee, assignor/transferor, and assignee/transferee.

Page 2: Items 1, 4, and 5 (names and addresses) -- The Commission should consider putting the names and addresses of the licensee, the assignor/transferor, and the assignee/transferee together with the fee information on the first page of the application for simplicity of identification of the parties to the application, which would facilitate preparation of public notices.

Items 6, 7, and 8 (information regarding how transfer of control will be accomplished) do not appear to be used in processing applications for transfer of control. Item 6 calls for submission of a certified copy of the articles of incorporation, which BellSouth has suggested should be deleted from Form 494 and should likewise be deleted here. Item 7 calls for a description of stock to be transferred, which is of dubious relevance in the typical case. Item 8 calls for copies of "any pertinent contracts, agreements, instruments, certified copies of court orders, etc.", which is extraordinarily broad and appears to call for information of a highly sensitive nature that has little relevance to the Commission's determination whether to approve a given transfer of control. BellSouth suggests that instead of these three items, the transferor should simply be required to include an exhibit describing the transaction.

Page 3: Item 10 (changes after transfer of control) should be eliminated, as it does not appear to serve any regulatory purpose and requires the submission of exhibits that may include highly sensitive information.

Item 11 (stock to be issued after transfer of control) should be eliminated, as it does not appear to serve any regulatory purpose.

item 12 (obligations of licensee held by transferee) should be eliminated, as it does not appear to serve any regulatory purpose.

Item 13 (state or local authorization) should be changed to a certification, and the requirement that a certified copy of such authorization be attached should be eliminated as an unnecessary paperwork burden.

Item 14 (assignee's relation to station) should be clarified or eliminated. It is unclear what relevance the assignee's current ownership or other interest in the station is, except

to the extent this information is used to determine whether the assignment is *pro forma*. If the latter is the purpose of this item, BellSouth suggests that a better approach would be to ask, in the case of both assignments and transfers, whether the assignment or transfer is *pro forma*, perhaps in connection with the description of the transaction.

Item 15 (assignee's control of station) appears to be overbroad in referring to "absolute control." A certification that the assignee will, after consummation, have unfettered access to, and control of, the station would appear to serve the Commission's purposes.

Items 16 and 17 (financial responsibility, issuance of stock) should be eliminated, as they serve no regulatory purpose; a certification of financial qualifications should suffice.

Items 20-32 (assignee/transferee's qualifications) should be revised similar to the parallel sections of Item 29 of Form 494, as described above.

Item 33 (affiliation with telephone company) should be eliminated, as it does not appear to have any regulatory relevance under the Part 21 licensing scheme.